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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,113	01/07/2004	Francisco J. Napolez	2973-A-34	5216

7590 05/04/2005  
Cahill, von Hellens & Glazer P.L.C.  
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EXAMINER

HAYES, BRET C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/753,113

**Applicant(s)**

NAPOLEZ ET AL.

**Examiner**

Bret C Hayes

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 18 JAN 05 have been fully considered but they are not persuasive.
2. In response to the argument that Applicants' vibration sensor is insensitive to air-borne pressure variations, examiner argues against two ways.

First, while that may be true and may further aid in patentably distinguishing the claimed invention from the prior art of record, such is not claimed. And a microphone, as disclosed by Hollis is, reasserted here by examiner, a vibration sensor.

Second, if a dog were barking loudly and closely enough to a dog wearing the claimed invention, it is questionable whether the device would not 'sense' sympathetic vibrations occurring in the dog wearing the device—in much the same way that eardrums sense sound by sympathetic vibration, a dog's anatomy, say its throat, can be caused to vibrate, given enough vibratory stimulus. How does the sensor distinguish from such?

Examiner suggests fully explaining for the record and then, as broadly as possible, introducing a recitation of such a limitation.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 3 – 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,263,836 B1 to Hollis.
5. Re – claims 3 and 8, Hollis discloses the claimed invention including: a) a housing **10**; b) first and second electrodes **13**—whether the electrodes are disclosed as being in contact with the dog's skin or not is irrelevant, as any protrusion extending toward the dog's neck would work its way down among the fur to the dog's neck, at least over time; a vibration sensor\* – while Hollis does not explicitly state a vibration sensor, since vocalizations (sounds) inherently vibrate the surrounding medium (air, in this case), it would be inherent to use a vibration sensor; d) control circuitry **32**; e) a motion detector **50**; and, f) the circuitry coupled to receive the motion detection signal and operative to produce the aversive stimulus signal.
6. Re – claims 4 and 9, Hollis further discloses a reset function, see Fig. 6, for example.
7. Re – claim 5, Hollis further discloses a battery monitor, set forth at col. 4, line 1, and an LED **15** as claimed.
8. Re – method claims 6 and 7, in view of the structure disclosed by Hollis, the method of operating the device would have been inherent, since it is the normal and logical manner in which the device could be used.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Alternatively, claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Hollis.

11. Hollis discloses the claimed invention except for explicitly stating the claimed circuit connectors *per se*; for example, high impedance, driver, resistors, transistors, etc. It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement these various connectors, since these are well known in the electronics art and since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (571)272 – 7045. The fax number is (703) 872 – 9306.

bh

5/1/05

  
JACK KEITH  
PRIMARY EXAMINER  
FIR 3644 SPE